

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

DARIN E. HEINBERG,

Plaintiff,

vs.

BENEFIS HEALTH SYSTEMS, et al.,

Defendants.

CV 18-105-H-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE’S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Darin Heinberg, a state prisoner proceeding without counsel, filed an Amended Complaint alleging that he was injured when Courtney Hibbs struck him with her pick-up truck while he was riding his bike. United States Magistrate Judge John Johnston screened Heinberg’s Amended Complaint before it was served on defendants pursuant to 28 U.S.C. § 1915(e)(2). Judge Johnston reviewed the Amended Complaint to identify cognizable claims.

Judge Johnston issued Findings and Recommendations on July 22, 2019. (Doc. 11.) Judge Johnston determined that Heinberg alleges sufficient claims against Courtney Hibbs to proceed past the screening stage. Judge Johnston determined that Hibbs must respond to the Amended Complaint. Judge Johnston further determined that Heinberg failed to name Safeco Insurance and Progressive Insurance Company in his original complaint. Judge Johnston determined that

Heinberg's claims against Gilbert and Dorothy Hibbs failed to state a claim upon which relief may be granted. Judge Johnston recommended that Heinberg's claims against the insurance companies, and Gilbert and Dorothy Hibbs be dismissed. Heinberg timely objected to Judge Johnston's Findings and Recommendations. (Doc. 12.)

The Court reviews de novo Findings and Recommendations timely objected to. 28 U.S.C. § 636(b)(1). The Court reviews for clear error the portions of the Findings and Recommendations not specifically objected to. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where a party's objections constitute perfunctory responses argued in an attempt to engage the district court in a reargument of the same arguments set forth in the original response, however, the Court will review the applicable portions of the findings and recommendations for clear error. *Rosling v. Kirkegard*, 2014 WL 693315 *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Heinberg objects to Judge Johnston's recommendation that the claims against the insurance companies and Gilbert and Dorothy Hibbs be dismissed. Heinberg advances the same arguments made in his Amended Complaint. Judge Johnston considered these arguments in making his recommendation to the Court. The Court finds no specific objections that do not attempt to relitigate the same

arguments and will review Judge Johnston's Findings and Recommendations for clear error. The Court finds no error.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 12) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that Defendants Gilbert L. Hibbs, Dorothy S. Hibbs, Safeco Insurance, and Progressive Insurance Company are **DISMISSED**.

DATED this 12th day of August, 2019.



Brian Morris
United States District Court Judge